

§ 779.361

(b) *Sales or repairs of tanks.* Sales or repairs of tanks for the storage of liquefied-petroleum-gas are recognized as retail in the industry, except: (1) Any tank exceeding 1,000 gallons in capacity; (2) any tank sold or repaired on the basis described in paragraph (a) (2) of this section or for the purposes described in paragraph (a)(3) of this section; and (3) sales in quantity larger than involved in the ordinary sales to a farm or household customer.

(c) *Conversion units.* Sales and installation of units for converting pumps, stoves, furnaces and other equipment and appliances to the use of liquefied-petroleum-gas, are recognized as retail sales except: (1) Sales of the installation of such conversion units which involve substantial modification of the appliance or equipment; (2) sales and installation of such units to be used in industrial machinery or equipment; (3) sales and installations made on the basis described in paragraph (a)(2) of this section or in quantity as described in § 779.327; and (4) sales and installation of such units for vehicles mentioned in paragraph (a) (4) of this section.

§ 779.361 Classification of other fuel oil sales.

(a) Sales of fuel oil (as differentiated from sales of butane and propane gases) are classified as retail and nonretail sales as follows:

(1) Retail sales—all sales of grades No. 1, No. 2, and No. 3 of fuel oil direct to householders for their own domestic uses;

(2) Nonretail sales:

(i) All sales of grades No. 4, No. 5, and No. 6 fuel oil as these heavy oils are “special purpose” goods to which the retail sales concept has no application (See § 779.321);

(ii) All sales for resale including such sales to peddlers and other dealers (See §§ 779.331–779.334);

(iii) All sales made pursuant to a formal invitation to bid (See § 779.328(d)).

(b) In some cases the retail or nonretail status of an establishment may turn on sales other than those listed above. In such cases all the facts relative to such sales shall be considered in arriving at a determination. The classification of such sales depends

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upon whether they are recognized as retail sales. In such cases particular attention shall be given to the quantities involved and the prices charged.

FEED DEALERS

§ 779.362 May qualify as exempt 13(a)(2) or 13(a)(4) establishments.

(a) An establishment engaged in selling feed may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act if it meets all the requirements of that exemption. Similarly an establishment making and processing the feed it sells may qualify as an exempt establishment under section 13(a)(4) of the Act if it meets all the requirements of that exemption.

(b) In determining whether, under the 13(a)(2) exemption, 75 percent of the establishment’s sales are not for resale and are recognized as retail sales in the industry, sales of feed to feeders will generally meet the requirements for such classification as previously explained in this subpart and will ordinarily be considered to be retail sales except for the following which do not meet the requirements and are not recognized as retail: Any sale of feed for shipment by railcar direct to the feeder; and sales made at a quantity discount which results in a price comparable to or lower than the establishment’s price to dealers for resale or, if the establishment makes no sales to other dealers, at a price comparable to or lower than the price prevailing in the immediate area in sales by similar establishments to dealers for resale.

(c) The custom grinding and mixing of feed (including the addition of supplements) for feeders from the grain they themselves bring in will be regarded as the performance of a service, and not the making or processing of goods for sale under section 13(a)(4). Such services are recognized as retail services in the industry and the revenue derived therefrom will be included with the retail receipts of the establishment.

(d) Employees employed in the grinding and mixing of feed for sale (as distinguished from the grinding and mixing services discussed in paragraph (c) of this section) are engaged in the